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MEMORANDUM FOR: Chief, Management Staff, DDA

STATINTL FROM:

Office of General Counsel

SUBJECT: Use of Appropriate Funds for Construction of Paracourse

1. You have asked this Office for an opinion as to whether or not the Agency may expend generally appropriated funds to construct the "Paracourse," a specially-surfaced jogging trail to be constructed around the Headquarters facility as more fully described below. It is our opinion, for the reasons set forth below, that the Agency may not expend generally appropriated funds to construct the Paracourse.

2. The Paracourse is the name for a jogging trail, approximately one mile in length, to be constructed around the Headquarters facility. The trail would be in addition to already existing jogging trails which have been created by the Employee Activity Association (EAA). In contrast to the EAA trails, the Paracourse would be specially surfaced and would have additional physical fitness facilities (e.g., chinning bars) constructed at various points along the course. You have indicated that the Paracourse would not be used to meet the needs of any particular Agency program or group of personnel. Instead, it would be constructed and used to maintain and improve the general health and physical well-being of all Agency employees.

3. The Agency is authorized to expend generally appropriated funds for the purposes necessary to carry out its functions. E.g., 50 U.S.C. §403j. Hence, the legal issue raised by your request is whether one of the Agency's functions is to maintain and improve employee general health and physical well-being. In our opinion, it is not.

4. Maintenance of employee general health and physical well-being is not an enumerated power or duty of this Agency, and, in our opinion, may not be implied from any of the Agency's existing powers and duties.

5. Further, there is no authority for the proposition that federal agencies generally have the power and duty to maintain employee general health and physical well-being.

6. We are aware that in 1978 the General Services Administration (GSA), in conjunction with the President's Council on Physical Fitness and Sports, issued "Guidelines For the Establishment of Physical Fitness Facilities in Federal Space." 43 Fed. Reg. 56733-56734. These Guidelines, however, merely make provision for the establishment of such facilities by agencies which otherwise have the specific power and duty to maintain and improve employee general health and physical well-being. If, as in the case of this Agency, such power or duty is lacking, then the Guidelines cannot provide an independent basis of authority.

7. The Act of September 6, 1966, Pub. L. No. 89-554, as amended (5 U.S.C. §7901, et seq.), and Executive Order 11807 are often cited as authority for the proposition that federal agencies have the authority to provide for employee general health. In our opinion, however, neither provision is supportive of that conclusion.

8. Federal agencies are authorized by the provisions of Pub. L. No. 89-554 to provide for an employee health service program. This grant of authority, although somewhat broad, does not explicitly grant to agencies the authority to establish programs to maintain the general health and physical well-being of their employees. Further, this grant has been significantly circumscribed by regulations issued by the GSA in implementation thereof. 41 C.F.R. §101-5.300, et seq. These regulations permit the following health services, among others, to be made available as part of the program: provision of emergency first aid; assistance to employees in the self-administration of prescriptions; and the provision of routine mass inoculations. The regulations, however, omit any specific mention of programs to maintain general health of employees. Accordingly, neither the statute nor the regulations offer support for the proposition that the Agency has the authority to operate such a program.

9. Executive Order 11807, entitled "Occupational Safety and Health Programs for Federal Employees," deals exclusively with occupational health and safety. It does not address the maintenance of employee general health. Hence, it is not relevant to this question.

10. In view of the above, it is our opinion that it is not a function of the Agency to provide for the maintenance of employee general health and physical well-being. Thus,

funds generally appropriated to the Agency may not be used to construct the Paracourse in furtherance of that supposed function.

11. In examining this question, we reviewed the relationship between the Paracourse and the possible physical fitness requirements for various Office of Security and Directorate of Operations personnel. Although, apparently, it is generally assumed that these personnel must maintain high levels of physical conditioning, the Office of Personnel Policy, Planning, and Management and the Office of Medical Services, working at our direction, were unable to find any explicit job requirements of this nature in regard to any position. If the construction of the Paracourse were to be justified as being necessary to the functioning of these personnel, it would seem that there should be explicit physical fitness or physical conditioning requirements established for their positions.

12. I trust that the above is responsive to your request. Should you have any further questions, feel free to contact me.

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cc:

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